

Remarks

This is in response to the Office Action dated June 29, 2004.

Claims 1-3, 10-11 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Chenette (USP 5360389), wrongly identified in the Office Action as Bateman et al. Claims 1-11, 13-14, 17 and 20 were rejected under 35 U.S.C. 102(e) as being anticipated by Rosenman (USP 6488659).

Per the above amendment, claims 1-7, 9 and 13-14 have been canceled, claims 8, 10-12, 17 and 20 amended, and claim 21 added. The rejections of those canceled claims are believed to be now moot.

Before discussing the cited references, the examiner's attention is respectfully directed to the Notice of References Cited attached to the Office Action which indicates reference Rosenman USP 6726654 but not Rosenman USP 6488659. A telephone message left by the undersigned with the examiner on or about July 6, 2004 to seek clarification as to which of the Rosenman references is to be applied was not returned. Given that the examiner did not return the call, and inasmuch as USP 6726654 is a continuation of USP 6488659 and therefore is assumed to contain the same disclosure, for this response, applicant treats Rosenman USP 6488659 as the reference applied insofar as it was cited in the body of the Office Action. That notwithstanding, the examiner is respectfully requested to make of record on a supplemental Notice of References Cited USP 6488659 so that the '659 reference may be listed on the face of the patent to issue from this application.

Turning to the two cited documents in turn, Chenette (USP 5360389) describes a device for use in implanting embryos having an outer sleeve 50 and a number of microcatheters 36 insertable within separate passages along the sleeve. This device is specifically for the insertion of embryos rather than the removal of oocytes, in the manner


of the amended claims. Furthermore, there is no mention of how the temperature the oocytes or embryos could be maintained, that is, there is no mention of insulating jackets surrounding both an aspiration tube and a flushing tube in the manner required by Claim 17, and no mention of any jacket or the like filled with a warming fluid, as required by the other claims.

Rosenman (USP 6488659) describes a device that is cooled so that a gell that is to be injected into the body for therapeutic purposes remains in a liquid state. This device is, therefore, in a very different field from that of the present invention. First, Rosenman is concerned with injecting a substance into the body rather than removing something from the body. Second, Rosenman is concerned with the administration of a gell rather than with biological material, such as oocytes. Third, Rosenman is concerned with maintaining something cold rather than maintaining something warm, as in the present invention. All the amended claims of the present application specify the inclusion of both an oocyte recovery needle and a reservoir connected to the apparatus to receive the oocyte aspirated through the needle. As such, these claims are all very clearly directed to the specific field of oocyte recovery. Also, all the present claims except for Claim 17 specify a source of a warming fluid, rather than the cooling fluid used by Rosenman. Claim 17 specifies that the apparatus has two separate insulating jackets around an aspiration tube and a flushing tube respectively. Nothing of this kind is disclosed by Rosenman.

The arrangement required by the amended claims, therefore, has appreciable differences over the prior art.

In light of the foregoing, the examiner is respectfully requested to consider the application and pass to issue all of the pending claims.

Respectfully submitted,



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